

STATE MS. - DE SOTO CO.
FILED

JUL 11 3 52 PM '97

RECORDING REQUESTED
BY, AND WHEN RECORDED
~~RETURN TO:~~

Lawyers Title Insurance Corporation
40 East Mitchell Drive
Phoenix, Arizona 85012
Attention: Ms. Sandy Vos

Return To: Lawyers Title Insurance Corp.
BK 74 PG 737 Attn: Benny Norris
W.E. DAVIS CH. CLK. 6363 Poplar Ave. - Suite 108
Memphis, TN 38119
(901) 685-3732

ASSIGNMENT, ASSUMPTION, MUTUAL RELEASE AND CONSENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION, MUTUAL RELEASE AND CONSENT AGREEMENT ("Assignment") is made and entered into as of May 5, 1997, by and among ARBY'S RESTAURANT DEVELOPMENT CORPORATION, a Delaware corporation, having its principal address at 1000 Corporate Drive, Fort Lauderdale, Florida 33334 ("Assignor"), RTM DEVELOPMENT COMPANY, a Delaware corporation having its principal address at 5995 Barfield Road, Atlanta, Georgia 30328 ("Assignee") and FRANCHISE FINANCE CORPORATION OF AMERICA, a Delaware corporation, as Master Servicer and Special Servicer, having its principal address at 17207 North Perimeter Drive, Scottsdale, Arizona 85255 ("FFCA").

WITNESSETH:

WHEREAS, Assignor is the lessor of that certain parcel of land, together with all tenements, hereditaments, appurtenances, rights, easements, and rights-of-way (public or private) thereunto appertaining or incident (hereto being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference), together with all buildings and other improvements located thereon (the "Premises"), under and pursuant to that certain lease agreement identified in Schedule I hereto and incorporated herein by reference (the "Lease," which term shall include all modifications and amendments thereto made before, on, or after the date hereof);

WHEREAS, Assignor is the lessor of certain equipment under and pursuant to that certain equipment lease agreement identified in Schedule I hereto and incorporated herein by reference (the "Equipment Lease," which term shall include all modifications and amendments thereto made before, on, or after the date hereof) (collectively, the Lease and the Equipment Lease shall be hereinafter referred to as the "Leases");

01/561323.1
FFCA No. 8000-3777A
Unit No. 257
Horn Lake, Mississippi
Equipment

97-8644

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to acquire, all of Assignor's right, title and interest in, to and under the Leases;

WHEREAS, Assignor desires to convey to Assignee and Assignee desires to acquire the Premises and all rights, ways, easements and licenses appurtenant to said Premises pursuant to a special warranty deed in a form acceptable to the parties hereto (the "Deed");

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to acquire Assignor's interest in the Premises under the Leases and to assume all of Assignor's rights, duties and liabilities thereunder on the terms and conditions set out herein;

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to acquire, all of Assignor's right, title and interest in, to and under the Leases;

WHEREAS, Assignor desires to convey to Assignee and Assignee desires to acquire the Premises and all rights, ways, easements and licenses appurtenant to said Premises pursuant to a special warranty deed in a form acceptable to the parties hereto (the "Deed");

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to acquire Assignor's interest in the Premises under the Leases and to assume all of Assignor's rights, duties and liabilities thereunder on the terms and conditions set out herein;

WHEREAS, pursuant to that certain Amended and Restated Loan Agreement (the "Loan Agreement"), dated as of October 13, 1995 and effective as of May 1, 1995, by and between FFCA Acquisition Corporation, a Delaware corporation ("Acquisition Corporation") and Assignor, Acquisition Corporation made a loan and an equipment loan (the "Loans") to Assignor, which Loans are secured by a deed of trust or mortgage, assignment of rents and leases and security agreement (the "Deed of Trust") burdening the Premises and Assignor's interest in the Leases recorded in the public records in the county where the Premises is located and an equipment security agreement (the "Security Agreement") burdening the equipment located at the Premises;

WHEREAS, Acquisition Corporation assigned and conveyed, *inter alia*, the note and the equipment note evidencing the Loans, the Deed of Trust, the Security Agreement and all other documents executed in connection with the Loans to LaSalle National Bank, Trustee, pursuant to the Pooling and Servicing Agreement, dated as of June 1, 1996 (the "P&S Agreement"), among FFCA Secured Assets Corporation, Depositor; FFCA; and ABN AMRO Bank N.V., Fiscal Agent;

WHEREAS, FFCA is willing to consent, as more fully set out herein.

NOW, THEREFORE, in consideration of the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment.** Assignor, as of the date hereof, hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Leases. Assignor further agrees to indemnify, defend (with counsel selected by Assignor and reasonably accepted by Assignee) and hold Assignee harmless from any and all loss, cost, expense, claim or damage suffered by Assignee as a result of any breach by Assignor of any of the covenants and agreements of the Leases prior to the date hereof.

2. **Assumption.** From and after the date hereof, Assignee hereby assumes and agrees to keep, observe, and perform duly and punctually, all the terms, covenants, provisions, and conditions in the Leases on the part of the landlord to be kept, observed and performed and arising or accruing from and after the date hereof. Assignee further agrees to indemnify, defend (with counsel selected by Assignee and reasonably accepted by Assignor) and hold Assignor harmless from any and all loss, cost, expense, claim or damage suffered by Assignor as a result of any breach by Assignee of the foregoing covenant and agreement.

3. **Possession.** Subject to the terms and conditions of the Leases, Assignor shall deliver possession of the Premises to Assignee on the date hereof.

4. **Consent of FFCA.** Notwithstanding anything to the contrary contained in the Leases, the Loan Agreement, the Deed of Trust or any amendments or modifications thereto, FFCA hereby consents to (i) Assignor's assignment of all of its right, title, and interest under the Leases to Assignee pursuant to this Assignment; (ii) Assignee's conveyance of the Premises pursuant to the Deed; and (iii) the transfer of 100% of the stock of Assignee to RTM Partners, Inc.

5. **Release.** FFCA and Assignor hereby release and discharge one another from their respective obligations to observe the terms and conditions of the documents executed in connection with the Loan Agreement (the "Loan Documents") and the Leases on their respective parts to be observed and performed arising and accruing from and after the date hereof. FFCA and Assignor hereby release and discharge one another, their employees, officers, directors (both past and present), shareholders, partners, agents, affiliates, heirs, successors, assigns and personal representatives from all claims and demands whatsoever, whether known or unknown, which either FFCA and Assignor may have or hereafter have or claim to have against one another by reason of any act or matter in connection with the Loan Documents and the Leases or the Premises arising and accruing from and after the date hereof. FFCA and Assignor hereby agree and covenant not to sue one another for any act or matter arising and accruing in connection with the Loan Documents and the Leases or the Premises from and after the date hereof. Notwithstanding any of the foregoing, Assignor shall remain liable and obligated with respect to (a) any payment obligations of ARDC under the Loan Documents or with respect to the Site that arose and accrued and were due and payable prior to the date hereof and (b) obligations for indemnification under the Loan Documents in respect of third party claims that are based on facts and circumstances occurring prior to the date hereof. Assignee acknowledges and consents to the foregoing.

6. **Future Notices.** From and after the date of this Assignment, all notices, demands, and other communications to the landlord under the Leases will be sent to Assignee in the manner provided in the Leases at the following address or such other address as Assignee may designate in writing from time to time:

RTM Development Company
5995 Barfield Road
Atlanta, Georgia 30328
Attn: Mr. J. Russell Welch
Senior Vice President
Telephone: (404) 705-1360
Telecopy: (404) 250-4856

with a copy to:

RTM, Inc.
5995 Barfield Road
Atlanta, Georgia 30328
Attn: General Counsel
Telephone: (404) 705-1362
Telecopy: (404) 250-4856

7. **Representations and Warranties.** Assignor hereby warrants and represents to Assignee that the Leases are in full force and effect and no Event of Default (as defined in the Leases) now exists thereunder and no conditions or facts exist with respect to Assignor which would with the passage of time and delivery of notice with respect thereto, constitute an Event of Default. The parties hereto warrant and represent to each other that this Assignment and any documents executed in connection herewith were executed by an officer of such party who was duly authorized to do so and that this Assignment and any documents executed in connection therewith constitute the legal, valid and binding obligations of such party, enforceable against such party in accordance with their terms.

8. **Severability.** In the event that any of the provisions of this Assignment shall by court order be held invalid or in contravention of any of the laws of the United States or of any state having jurisdiction over the subject matter or of any dispute arising under it, such invalidation shall not serve to affect the remaining portion of this Assignment.

9. **Notices.** Any notice, approval, consent or other communication given under this Assignment shall be given in the manner provided in the Leases.

10. **Further Assurances.** The parties hereto agree to execute all other documentation necessary or appropriate to carry out the intentions expressed in this Assignment.

11. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original.

12. **Recordation.** This Assignment, or counterpart originals of this Assignment, may be recorded by any party in the Public Records of the County in which the Premises is located.

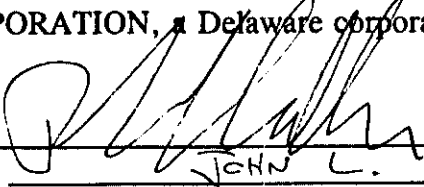
IN WITNESS WHEREOF, the Assignor and Assignee have executed this Assignment as of the date first written.

ATTEST:


Secretary

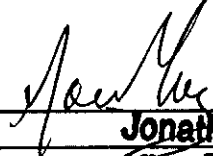
ASSIGNOR:

ARBY'S RESTAURANT DEVELOPMENT CORPORATION, a Delaware corporation

By 
Name JOHN L. COBLAN
Title PRESIDENT

ASSIGNEE:

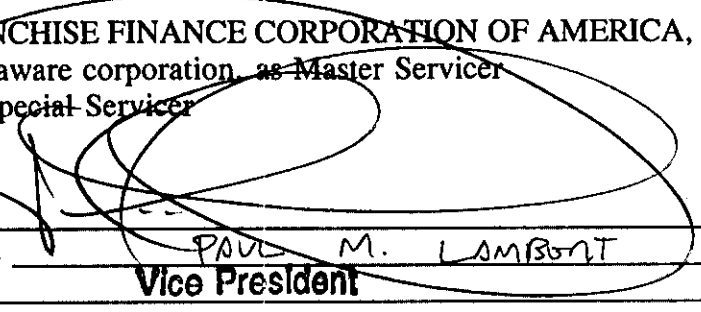
RTM DEVELOPMENT COMPANY, a Delaware corporation

By 
Name Jonathan P. May
Title Vice President

FFCA:

FRANCHISE FINANCE CORPORATION OF AMERICA, a Delaware corporation, as Master Servicer and Special Servicer


Secretary

By 
Name PAUL M. LOMBERT
Title Vice President

STATE OF ARIZONA)
) ss.
 COUNTY OF MARICOPA)

PERSONALLY appeared before me, the undersigned authority in and for said County and State, within my jurisdiction, the within named, JOHN L. CONLAN and CHRISTINE C. MARSHALL, duly before me, who acknowledged to me that they are the PRESIDENT and the ASSISTANT SECRETARY Arby's Restaurant Development Corporation, a Delaware corporation, and that for and on behalf of said corporation and as its act and deed, they signed and delivered the above and foregoing instrument on the day and in the year therein mentioned, after first having been duly authorized so to do by said corporation.

GIVEN under my hand and official seal on this the 1st day of May, 1997.


 NOTARY PUBLIC

My Commission Expires:

My Commission Expires March 12, 1999

STATE OF ARIZONA)
) ss.
 COUNTY OF MARICOPA)

PERSONALLY appeared before me, the undersigned authority in and for said County and State, within my jurisdiction, the within named, **Jonathan P. May** and **CHRISTINE C. MARSHALL**, duly before me, who acknowledged to me that they are the **Vice President** and the **ASST. SECRETARY** RTM Development Company, a Delaware corporation, and that for and on behalf of said corporation and as its act and deed, they signed and delivered the above and foregoing instrument on the day and in the year therein mentioned, after first having been duly authorized so to do by said corporation.

GIVEN under my hand and official seal on this the 1st day of May, 1997.

Lois H. Keel
 NOTARY PUBLIC

My Commission Expires:

My Commission Expires March 12, 1999

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BOOK 74 PAGE 744

PERSONALLY appeared before me, the undersigned authority in and for said County and State, within my jurisdiction, the within named, *PAUL M. LAMBERT* and *DENNIS L. RUBEN*, duly before me, who acknowledged to me that they are the **Vice President** and the *ASST. SECRETARY* Franchise Finance Corporation of America, a Delaware corporation, as Master Servicer and Special Servicer, and that for and on behalf of said corporation and as its act and deed, they signed and delivered the above and foregoing instrument on the day and in the year therein mentioned, after first having been duly authorized so to do by said corporation.

GIVEN under my hand and official seal on this the *1st* day of May, 1997.

Lois H. Keil

NOTARY PUBLIC

My Commission Expires:

My Commission Expires March 12, 1999

This document prepared by:

David A. Weill, Esq.
Kutak Rock
1650 Farnam Street
Omaha, Nebraska 68102
(402) 346-6000

EXHIBIT A**LEGAL DESCRIPTION**

Lot 3, Resubdivision of Lots 3, 4 and 5, Phase I, DeSoto Crossing Subdivision in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as shown on Plat of record in Plat Book 46, Page 39, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Indexing Instructions:

Lot 3, Resubdivision of Lots 3, 4 and 5, Phase I
DeSoto Crossing Subdivision
De Soto County, Mississippi

SCHEDULE I

BOOK

74 PAGE **746**

LEASE

1. Lease dated as of May 1, 1995 between Lessor and Lessee.
2. Memorandum of Lease dated as of May 1, 1995 recorded in Book 68 at Page 574 of the real property records of the county where the Premises is located.
3. UCC-1 Financing Statement (with respect to the Lease) filed at File No. 0890083 with the Secretary of State of the state where the Premises is located.
4. Equipment Lease dated as of May 1, 1995 between Lessor and Lessee.
5. UCC-1 Financing Statement (with respect to the Equipment Lease) filed with the Secretary of State of the state where the Premises is located at File No. 00970293 and File No. 0890082 (UCC).
6. UCC-1 Financing Statement (with respect to the Equipment Lease) recorded in Book 763 at Page 795 of the real property records of the county where the Premises is located.